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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/650,579	08/28/2003	Donald R. Merritt	P-9694.01	8240
27581	7590	09/03/2004	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MS-LC340 MINNEAPOLIS, MN 55432-5604			LAYNO, CARL HERNANDZ	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/650,579

Applicant(s)

MERRITT ET AL.

Examiner

Carl H. Layno
9/2/04

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for priority as a Continuation of U.S. Application Serial No. 09/970,374, now U.S. Patent No. 6,671,552.

Drawings

2. Applicant's drawings are objected to by the Draftsperson. See attached PTO-948.

Claim Objections

3. Claims 2 and 3 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Specifically, claims 2 and 3 fail to limit parent claim 1, since they currently depend from a non-existent "claim 25". To overcome this objection, the Examiner recommends changing the dependency of these claims to depend from claim 1.

Double Patenting

4. Claims 1 and 4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 28, 29, and 30 of U.S. Patent No. 6,671,552, respectively. Although the conflicting claims are not identical, they are not patentably distinct

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from each other because the method steps recited in applicant's claim 1 reads verbatim on the first part of claims 28 and 29 of U.S Patent No. 6,671,552, and because the elements of applicant's claim 4 read word-for-word upon the details recited in the first half of claim 30 of U.S. Patent No. 6,671,552.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, there is no antecedent basis for a "step c)" (claim 2) and a "step b)" (claim 3) in base claim 1. To overcome this rejection, the Examiner recommends either altering claim 1 to include step reference letters "a)", "b)", and "c)", or replacing the references to "step c)" and "step b)" in claims 2 and 3, respectively, with proper references to their corresponding method steps.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Snell et al '579 or Busacker et al '448.

The Snell et al '579 patent describes a battery monitoring apparatus **110** (Fig.1) for realistically estimating the remaining life of a battery **70** in an implantable cardiac stimulating device **10**. The device measures battery voltage E_{BAT} to calculate battery current drain $I_{CONSUMED}$ using Ohm's law: $I_{CONSUMED} = E_{BAT}/R_{OHMIC\ CIRCUIITS}$ (col.9, line 20). This current drain **350** (Fig.5), along with the measured battery voltage **394**, are used in determining an estimated remaining battery life (i.e. the time remaining until the battery's recommended replacement time (RRT)), which is calculated then displayed to the user **430** (Fig.5).

The Busacker et al '448 patent describes an implantable medical device **10** (Fig.1 and 2) having the ability to measure battery voltage and current drain (see Fig.4b and col.19, line 43 thru col.20, line 48), and based upon these measures, to calculate a remaining effective battery lifetime (DT) between an elective replacement indicator time (ERI) and a time at which erratic pacing takes place due to battery exhaustion. This remaining battery time (DT) is calculated by the formula $DT=DQ/I$. See col.19, line 65 thru col.20, line 11.

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Conclusion

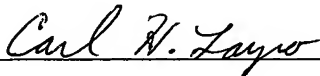
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Stessman '355 patent describes an implantable cardiac stimulating device having pertinent battery current measurement capabilities. Unlike applicant's device, however, the reference does not appear to calculate or estimate remaining battery life..

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (703) 308-3694. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message (carl.layno@uspto.gov) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (703) 308-5181. All faxed correspondence should be sent to the Office's new official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (703) 305-7520.



CARL LAYNO
PRIMARY EXAMINER

CHL
9/1/2004